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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,451	02/15/2002	Doug Mercier	111942	8744

25944 7590 12/16/2002

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EXAMINER
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MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

# Office Action Summary

Application No.

10/075,451

Applicant(s)

MERCIER ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the second attachment mechanism" in lines 18 and 19. There is insufficient antecedent basis for this limitation in the claim. The second attachment mechanism has not been set forth. Moreover, there cannot be a third attachment mechanism without a second attachment mechanism. Claim 12 attempts to set forth a second attachment mechanism that should have been set forth in claim 11. The remaining claims are included since they stem from rejected claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 2, 5, 9, 11-14, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Abrums (US 5,586,656). Regarding claim 1, see Figs. 1-5 where the structure is shown. See specifically Figs. 3a and 4, where the lid can be engaged with the bottom of the container in an inverted position with the first and second attachment mechanisms. Regarding claim 2, see Fig. 2 where 38 is the first attachment projection. Regarding claim 5, see Fig. 3a where the second attachment projection is 58 and the third attachment projection is 62. Regarding claims 9 and 18, see Fig. 2a where the circumferential walls 56 and 54a have no protrusions on their exterior surfaces. Regarding claim 11, see Figs. 3a and 4 where the lid is attachable to the bottom inverted via the first second and second attachment mechanisms. Regarding claim 12, as it is best understood, see Fig. 3a where the lid is nested to the bottom of the container. Regarding claim 13, see Fig. 5, where the lids of the interior containers are attached to the bottom of each container. The lid of the largest container can be engaged with the open top of the largest container. This is not required by the optionally statement. Regarding claim 14, see Fig. 2, where the first attachment projection is 38.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 6, 7, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Roop (US 2,695,115). Regarding claims 3, 4, 15, and 16, Abrums does not teach the first attachment mechanism is a plurality of projections or that the projections are oblique with respect to the bottom surface. Roop, as seen in Fig. 1-6, teaches stacking and nesting container similar to Abrums where there are a plurality of projections that are oblique with respect to the bottom surface. It would have been obvious to use the plurality of oblique projections of Roop in the containers of Abrums to provide an alternative way to join the container and lids or to provide a more positive lock between the containers. Moreover, it would have been obvious to substitute the non-annular projections of Roop in the containers of Abrums to save on plastic. Regarding claim 6 and 7, Abrums does not teach the second attachment mechanism is a plurality of projections or that the projections are oblique with respect to the bottom surface. Roop, as seen in Fig. 1-6, teaches stacking and nesting container similar to Abrums where there are a plurality of projections that are oblique. It would have been obvious to use the plurality of oblique projections of Roop in the containers of Abrums to provide an alternative way to join the container and lids or to provide a more positive lock between the containers. Moreover, it would have been obvious to substitute the non-annular projections of Roop in the containers of Abrums to save on plastic.

Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Fritz (US 5,423,453). Regarding claims 8 and 18, Abrums does not teach that the container is transparent. Fritz teaches a similar container that is

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transparent. It would have been obvious to employ the transparent material of Fritz in the container of Abrums so that the contents could be seen from the exterior of the container.

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Andress et al (US 5,356,026). Regarding claims 10 and 19, Abrums teaches a ridge in the container but does not teach the one or more notches provided in the ridge. Andress et al as, seen in Fig. 1, teaches at least one notch in a ridge. It would have been obvious to employ the notch of Andress et al in the container of Abrums to make it easier to remove the lid as taught by Andress et al.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yuen is cited for teaching transparent portions. Tenney et al, Roop '770, Havens et al, DeMars, Andress et al '229, and Devine et al are all cited for teaching stacking containers and lids. Walker and Stein are both cited for teaching lids attaching to containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Joseph C. Merek  
December 5, 2002

A handwritten signature in black ink, consisting of a large, stylized loop that crosses itself, with a horizontal line extending to the right.

  
**Stephen K. Cronin**  
**Primary Examiner**